

Message Text

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TO AMEMBASSY BONN

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C O N F I D E N T I A L USBERLIN 2003

E O 11652: GDS

TAGS: PFOR, PGOV, WB, GW, UR

SUBJ: PROSECUTION OF LORENZ KIDNAPPERS IN BERLIN

1. CONSIDERABLE CONFUSION, AND POTENTIAL CONTROVERSY, APPEARS TO BE DEVELOPING OVER HANDLING OF LORENZ KIDNAPPING PROSECUTION. WE REPORTED IN REFTEL COMMENT IN FRANKFURTER ALLGEMEINE STORY SEPTEMBER 21 THAT CERTAIN GERMAN CIRCLES ARE UNHAPPY AT ALLIED DECISION TO PERMIT FEDERAL PROSECUTOR TO BRING CHARGES AGAINST JUNE 2 MOVEMENT MEMBERS IN BERLIN BUT TO HAVE ACTUAL COURT CASE HANDLED BY MEMBERS OF FEDERAL PROSECUTOR'S LOCAL OFFICE WHO ARE NOT PARTICULARLY VERSED IN COURT ROOM WORK. TAGESSPIEGEL REPORTS SEPTEMBER 23 THAT WHILE TRIAL WILL BE HELD IN BERLIN AND FEDERAL PROSECUTOR IS IN CHARGE OF "INVESTIGATION" BERLIN PROSECUTOR MAY YET SIGN INDICTMENTS AND ASSUME RESPONSIBILITY FOR PROSECUTING. SUBJECT ALSO AROSE AT JOINT PRESS CONFERENCE BY FRG JUSTICE MINISTER VOGEL AND FEDERAL PROSECUTOR TO DISCUSS NEW ANTI-TERRORISM LAW. VOGEL WAS QUOTED BY DIE WELT
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SEPTEMBER 23 AS SAYING THAT QUESTION OF WHO WILL BRING

INDICTMENT IS STILL UNDER STUDY AND THAT "THE DECISION WHO SIGNS AN INDICTMENT IS AN INTERNAL DECISION FOR OFFICIALS." DIE WELT ADDS THAT FEDERAL PROSECUTOR WAS THEN ASKED BY REPORTERS WHETHER HE WOULD SIGN INDICTMENT AND THAT BEFORE HE COULD RESPOND, JUSTICE MINISTER BROKE IN TO SAY "CAUTION, HERR BUBACK." FEDERAL PROSECUTOR THEN SAID MERELY "I WILL ONLY DECIDE WHEN THE INDICTMENT PAPERS ARE LAID BEFORE ME."

2. WE WOULD BE CONTENT OF COURSE WERE GERMANS FINALLY TO DECIDE THAT FOR NORMAL REASONS OF JURISPRUDENCE IT WAS POSSIBLE AND DESIRABLE FOR BERLIN PROSECUTOR TO HANDLE CASE. WE ARE CONCERNED, HOWEVER, THAT MATTER HAS ALREADY RECEIVED SO MUCH PUBLICITY AND BEEN SO LINKED IN PUBLIC'S EYE TO OTHER ALLIED RESTRICTIONS ON FEDERAL PROSECUTOR'S ACTIVITY, NOTABLY ISSUANCE OF BK/O ON ANTI-TERRORISM LAW, THAT THIS DECISION, IF TAKEN, WOULD BE ATTRIBUTED EITHER TO ALLIED PRESSURE OR TO AN ALLIED REFUSAL TO CONSIDER WAYS IN WHICH AN EFFECTIVE FEDERAL PROSECUTION COULD OCCUR. ALLIES COULD THEN COME UNDER INCREASING ATTACK FOR TAKING ALLEGEDLY MORE RESTRICTIVE POLICY ON FRG-BERLIN TIES IN FACE OF SOVIET PRESSURE.

3. WE SEE TWO POSSIBLE GROUNDS FOR CONFUSION DEVELOPING AS GERMANS GROPE TOWARD THEIR DECISION. ONE IS QUESTION OF WHO SIGNS INDICTMENT. VIRTUALLY ALL SIGNIFICANT OFFICIALS GOVERNMENTAL ACTS IN GERMAN SYSTEM ARE DONE IN NAME OF HEAD OF DEPARTMENT. SIGNATURE IS FREQUENTLY PERFORMED, HOWEVER, BY A LOWER OFFICIAL IN BEHALF OF THE CHIEF. THUS A DIVISION OR OFFICE CHIEF MAY SIGN AN OFFICIAL DOCUMENT "IM AUFTRAG" OF A SENATOR OR A FEDERAL MINISTER. WE HAVE NOT UNDERSTOOD ALLIED RESTRICTIONS ON FEDERAL PROSECUTOR'S INVOLVEMENT IN LORENZ KIDNAPPING PROSECUTION TO ENCOMPASS A BAN ON THE INDICTMENT BEING SIGNED BY THE HEAD OF THE FEDERAL PROSECUTOR'S BERLIN OFFICE "ON BEHALF OF" THE FEDERAL PROSECUTOR. IN FACT, THIS IS WHAT WE HAD ASSUMED WOULD BE DONE.

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4. SECOND POSSIBLE CONFUSION IS ON PERSONNEL WHO MAY HANDLE CASE IN COURT. ALLIES HAVE SAID THAT WE WISH PROSECUTION TO BE HANDLED BY FEDERAL PROSECUTOR'S BERLIN OFFICE, NOT BY DR. BUBACK HIMSELF OR BY OTHER HIGH OFFICIAL FROM KARLSRUHE. WE RECOGNIZE, HOWEVER, THAT PERSONNEL PRESENTLY IN FEDERAL PROSECUTOR'S BERLIN OFFICE SPECIALIZE IN HANDLING APPEALS WITH FEDERAL COURTS LOCATED IN CITY, NOT IN TRIAL WORK. WE WOULD ASSUME

THAT IF THESE PEOPLE NEED TECHNICAL SUPPORT IN TRIAL WORK IT WOULD BE WITHIN AGREED ALLIED GUIDELINES FOR ONE OR MORE SPECIALISTS TO BE ASSIGNED FROM KARLSRUHE TO BERLIN OFFICE. THEY WOULD THEN BE AS MUCH A PART OF THAT OFFICE AS OFFICIALS WHO HAVE BEEN HERE FOR YEARS. MAIN POINT IS THAT POLITICALLY SENSITIVE HIGH OFFICIAL SUCH AS BUBACK WOULD NOT BE ACTING PERSONALLY IN A BERLIN COURT.

5. IF OUR UNDERSTANDING OF THESE POINTS IS CORRECT, IT MIGHT ASSIST GERMANS IN MAKING THEIR DECISIONS AND HELP US AVOID FUTURE RECRIMINATIONS. IF EMBASSY WERE TO CLARIFY TO FRG THAT WE DO NOT OBJECT TO INDICTMENT BEING BROUGHT BY HEAD OF BERLIN OFFICE "ON BEHALF OF" FEDERAL PROSECUTOR AND THAT WE DO NOT OBJECT TO TRANSFER OF ONE OR MORE TRAIL EXPERTS TO BERLIN OFFICE OF FEDERAL PROSECUTOR TO ASSIST THAT OFFICE IN HANDLING PROSECUTION.GEORGE

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